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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/472,088	12/23/99	RAMESH	N D-30030-01

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CRYOVAC INC
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IM31/0509

H H
EXAMINER

VO, H	ART UNIT	PAPER NUMBER
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1771
DATE MAILED:
05/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary	Application No.	Applicant(s)
	09/472,088	RAMESH, N.S.
	Examiner	Art Unit
	Hai Vo	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 23 December 1999.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-32 is/are pending in the application.

4a) Of the above claim(s) 22-32 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-21 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892)

16) Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.

18) Interview Summary (PTO-413) Paper No(s) _____.

19) Notice of Informal Patent Application (PTO-152)

20) Other: _____

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-21, drawn to a composite structure, classified in class 428, subclass 304.4.
 - II. Claims 22-32, drawn to a method of making a composite structure, classified in class 264, subclass 45.1.
2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product as claimed can be made by another and materially different process, such as heat laminating the foam layer to the coating layer.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Thomas C. Lagaly on 04/26/01 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 22-32 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-14, 16-21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over D'Luzansky et al. (US 5,275,860).

It has been held that the functional "whereby" statement within the claim 1 dose not define any structure and accordingly can not serve to distinguish. *In re Mason*, 114 USPQ 127, 44 CCPA 937 (1957). "Whereby" needs to be changed to "wherein".

Appropriate correction is required.

D'Luzansky discloses a body board comprising an intermediate layer positioned between the top skin and the core. The core is polypropylene, the top skin being polyethylene and the intermediate layer being a mixture of polyethylene and polypropylene. See figure 2 and column 5, lines 19-25. Since the structural

components of the bodyboard are bonded to each other by heat lamination, no adhesives are used; therefore the bodyboard is substantially solventless.

With regard to claims 8, 18, and 21, D'Luzansky discloses the density of the foam core polypropylene is between 1.2 to 2.5 pounds per cubic foot. See column 4, lines 43-46.

D'Luzansky discloses the polyethylene top skin having the thickness in the range of 12 mm to 35 mm (0.47 inch to 1.38 inch) and is usually around 25 mm or 0.98 in. See column 4, lines 59-62. D'Luzansky also teaches the thickness of the board is about 2.5 inch in the major area of the board. See column 1, lines 18-20. Because the board is normally composed of a laminated structure in which a core has joined to it a top deck skin and a bottom skin, the thickness of polypropylene foam core is about 0.54 inch.

The examiner takes the position that the range differences would not involve any inventive concept because applicant has produced no evidence tending to show superior results by using the ranges as claimed. Absent a showing to the contrary, discovering particular ranges within a range disclosed by the prior art would be within the skill of the art (*In re Reven*, 256 USPQ 679 (CCPA 1968)). For those reasons, using the ranges as claimed in the D'Luzansky reference would have been obvious to one having ordinary skill in the art at the time the invention was made. D'Luzansky is either anticipated or strongly suggested the claimed subject matter. D'Luzansky is silent as to a bond strength of a bodyboard and the density of polyethylene in the top skin layer. However, since the bodyboard of D'Luzansky is structurally the same, and made of the same materials as the presently claimed composite. It is the examiner's position that the bodyboard of D'Luzansky exhibits substantially identical properties as the

composite structure of present invention. D'Luzansky is either anticipated or strongly suggested the claimed subject matter.

8. Claims 1-21 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hurley et al. (US 5,938,878). Hurley discloses a laminated structure having core material laminated to the first foam layer on one surface and to a second foam layer on a second surface of core. See figure 2. The foam layer or core material can be a polymer selected from the group consisting of low density polyethylene, polypropylene and ethylene-propylene rubber. See column 9, lines 20-45. Hurley discloses the polymer structure is laminated with heat only. Heat lamination eliminates the need to use any adhesives to join the structural components. See column 5, lines 1-4. Therefore, the laminated structure is substantially solventless. Hurley discloses polymer structure is used for athletic gear. See abstract.

With regard to claims 7 and 8, Hurley discloses the first polymer foam layer and the second polymer foam layer having the average densities of between about 2 to 8 pounds per cubic foot. See column 2, lines 34-37.

With regard to claim 21, Hurley discloses each of the first foam layer and the second foam layer having a thickness between about 1/32 and 1/2 inch. The examiner takes the position that the range differences would not involve any inventive concept because applicant has produced no evidence tending to show superior results by using the ranges as claimed. Absent a showing to the contrary, discovering particular ranges within a range disclosed by the prior art would be within the skill of the art (*In re Reven*,

256 USPQ 679 (CCPA 1968)). For those reasons, using the ranges as claimed in the Hurley reference would have been obvious to one having ordinary skill in the art at the time the invention was made. Hurley is silent as to a bond strength of a laminated structure. However, since the laminated structure of Hurley is structurally the same, and made of the same materials as the presently claimed composite. It is the examiner's position that the laminated structure of Hurley exhibits substantially identical properties as the composite structure of present invention. Hurley is either anticipated or strongly suggested the claimed subject matter.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on Monday to Friday, 8:30 to 5:00 (EAST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (703) 308-1261. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3599 for regular communications and (703) 305-7718 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3601.

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HV
May 4, 2001


BLAINE COOPENHEAVER
PRIMARY EXAMINER